



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 16, 1998

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Carol Pensky, Treasurer
DNC Services Corporation/
Democratic National Committee
430 S. Capitol Street, S.E.
Washington, DC 20003

RE: MUR 4806
DNC Services
Corporation/Democratic National
Committee and Carol Pensky, as
treasurer

Dear Ms. Pensky:

On September 1, 1998, the Federal Election Commission found that there is reason to believe the DNC Services Corporation/Democratic National Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Subpoena to Produce Documents must be submitted within 30 days of your receipt of this subpoena. Any additional materials or statements you wish to submit should accompany the response to the subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Tamara K. Kapper, the staff member assigned to this matter, at (202) 694-1650.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures

Factual and Legal Analysis
Subpoena
Procedures
Designation of Counsel Form

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: DNC Services Corporation/ MUR: 4806
Democratic National Committee and
Carol Pensky, as treasurer

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). On September 18, 1997, the Commission received a referral from the Office of the Comptroller of the Currency, ("OCC"), regarding its discovery of a contribution made by Hamilton Bank, N.A., ("the Bank") to the Democratic National Committee ("DNC").

A. The Law

The Federal Election Campaign Act of 1971, as amended, ("the Act") prohibits any political committee or other person from knowingly accepting or receiving any contribution from a national bank, or any officer or director of a national bank to consent to any contribution or expenditure by the national bank. 2 U.S.C. § 441b(a). *See also* 11 C.F.R. § 114.2(a). The Act defines a contribution as any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i).

A donation made to a national party committee for a building fund is not considered a contribution or an expenditure, if it is specifically designated to defray any cost incurred for the

construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for a Federal office.

11 C.F.R. § 100.7(b)(12) and 11 C.F.R. § 114.1(a)(2)(ix). Thus, building fund donations are not considered contributions and are not subject to any limits or prohibitions of the Act. However, donations to building funds shall be reported as a memo entry on Schedule A of the committee's disclosure report. 11 C.F.R. § 104.3(g).

B. The Facts

In the spring of 1997, during their normal course of reviewing the Bank's records, OCC examiners discovered that on April 26, 1996 the Bank had made a \$50,000 contribution to the DNC. According to the DNC's disclosure reports on file with the Commission, the DNC deposited the contribution from the Bank into its non-federal corporate account on April 30, 1996. After the discovery of the prohibited contribution by OCC examiners, on June 16, 1997, the DNC sent the Bank a letter apologizing for "inadvertently" depositing the \$50,000 contribution into the non-federal corporate account, and stating that it would transfer the \$50,000 from that account to its Building Fund account immediately. The DNC's Building Fund account disclosure report for the reporting period of January 1 through June 30, 1997, indicates that it received a \$50,000 transfer from the non-federal corporate account on June 16, 1997.

According to the referral material, the Bank's contribution to the DNC was the result of a solicitation letter dated April 1, 1996, from Howard Glicken, Director of the National Finance Board of the DNC. The letter was sent to Eduardo A. Masferrer, Chairman of Hamilton Bank N.A., at the Bank's address and conveyed to him the cost and benefits of becoming a trustee member of the DNC. The solicitation letter, which was written on DNC letterhead and signed by Mr. Glicken, details all the various privileges and advantages that

trustee members receive upon contributing \$50,000, which include, among other things, dinner with the President and "preferential treatment for appointments to Boards and Commissions." The letter also references conversations previously held between Mr. Masferrer and Mr. Charles Dusseau, the former Florida Secretary of Commerce, regarding the purchase of a trustee membership in the DNC.

After receiving solicitations from Mr. Glicken and Mr. Dusseau, it appears that Mr. Masferrer instructed the Bank's Deputy General Counsel, Armin G. Seifart, to determine whether the Bank could make a contribution to the DNC. Mr. Seifart appears to have then sought outside counsel and an instruction from the DNC's general counsel regarding the legality of the contribution. On April 24, 1996, Mr. Seifart received a letter from the DNC's General Counsel, Joseph E. Sandler, advising him that "...it is lawful for the Democratic National Committee to accept a contribution to its Building Fund account from a national bank." The letter went on to inform the Bank that checks to the Building Fund should be made payable to "DNC--Building Fund."

Maria F. Diaz, Senior Vice President for Finance for the Bank, has stated in her response to OCC inquiries that she personally spoke to the DNC's general counsel and other DNC representatives, and was told that the only permissible contribution the Bank could make to the DNC was to its Building Fund.

On April 26, 1996, the Bank issued a check to the DNC in the amount of \$50,000 and designated it for the purchase of an annual trustee membership, not for the Building Fund. The Bank's purchase requisition form that authorized the making of the contribution also stated that the purpose of the disbursement was the purchase of an annual trustee membership. This internal document was signed by both Mr. Masferrer and Ms. Diaz and was dated April 26, 1996.

Several months later, on November 15, 1996, the DNC sent Mr. Masferrer a letter thanking him for his "generous support" and informing him that his support helped them to "carry out such key campaign components such as polling, media and get out the vote operations." There is no evidence in hand that the Bank responded to this letter, asking that the donation go into the Building Fund.

C. The Analysis

Pursuant to 2 U.S.C. § 441b(a) it is unlawful for a political committee or other person knowingly to accept or receive a contribution from a national bank. According to the DNC's non-federal corporate account disclosure reports, on April 30, 1996 it received a \$50,000 contribution from Hamilton Bank. The contribution appears to have been used on behalf of a Federal candidate and for Federal election party activities, because on November 15, 1996, the DNC sent Mr. Masferrer a letter thanking him for the contribution and noting that his support helped "President Clinton's reelection campaign and the Democratic Party" to carry out key campaign components such as polling, media and get out the vote operations. As a result of the OCC examiners' inquiries into the contribution, on June 16, 1997, in a letter to Ms. Diaz, the DNC explained that the contribution was inadvertently deposited into its non-federal corporate account and that DNC staff were responsible for the error, not the Bank.

DNC staff should have ascertained the legality of the contribution because the check was from a national bank, especially after the Bank designated the check for the purchase of an annual trustee membership. In addition, any error on the part of the DNC should not have occurred because the DNC's General Counsel had faxed the Bank's officers instructions about how it could contribute to the DNC six (6) days prior to the receipt of the prohibited

contribution. Thus, the DNC through its General Counsel had prior knowledge that the contribution was coming from a source that could only make a contribution to the Building Fund.

Therefore, in light of the above, there is reason to believe that DNC Services Corporation/Democratic National Committee and Carol Pensky, as treasurer, violated 2 U.S.C. § 441b(a).

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)
) MUR 4806
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SUBPOENA TO PRODUCE DOCUMENTS

TO: Carol Pensky, Treasurer
DNC services Corporation/
Democratic National Committee
430 S. Capitol Street, S.E.
Washington, DC 20003

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to produce the documents requested in the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such documents must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463 within 30 days of receipt of this Subpoena.

MUR 4806
DNC Services Corporation/
Democratic National Committee
Page 2

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set her
hand in Washington, D.C. on this 16th, day of September, 1998.

For the Commission,

Joan D. Aikens
Joan D. Aikens
Chairman

ATTEST:

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request (3 pages)

THE **OF**

INSTRUCTIONS

Should you claim a privilege with respect to any documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

The following request for production of documents is continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of this discovery request, including the instructions thereto, the terms listed below are defined as follows:

"You" and "the DNC" shall mean the named respondent in this action to whom this discovery request is addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of this request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

DOCUMENT REQUEST

This Document Request refers to the following contribution made to the Democratic National Committee:

<u>Name of Contributor</u>	<u>Date of Deposit</u>	<u>Amount</u>
Hamilton Bank N.A., Miami, Florida	April 30, 1996	\$50,000

1. Describe and produce all documents relating to, or referencing, the solicitation of this contribution by the DNC, including, but not limited to, all solicitation letters, contribution cards, pledge cards, tracking memorandum or other similar documents disclosing the solicitor(s) of the contribution or attributing credit for the receipt of the contribution to a person or persons, and all telephone memoranda and/or calendar or appointment book entries evidencing the solicitation(s).
2. Describe and produce all documents relating to, or referencing, the forwarding, transmission or receipt of this contribution to or by the DNC.
3. Describe and produce all documents not otherwise produced in response to Requests #1 and #2 reflecting correspondence or other communications with or by Howard J. Glicker regarding this contribution.
4. Describe and produce all documents not otherwise produced in response to Requests #1 and #2 reflecting correspondence or other communications with or by Charles Dusseau regarding this contribution.
5. Describe and produce all documents not otherwise produced in response to Requests #1, #2, #3 and #4 reflecting correspondence or other communications with or by Eduardo A. Masferrer regarding this contribution.
6. Describe and produce all materials provided to prospective contributors in 1996 regarding the privileges, benefits and responsibilities of a Trustee Membership in the DNC, and explaining the size and purposes of contributions which would result in the conferring of such a membership upon the contributor.